

Remarks

The Office Action mailed April 2, 2007 and made final has been carefully reviewed. The foregoing amendment has been made in consequence thereof.

The Commissioner is asked to consider this a petition for a one-month extension of time from July 2, 2007 to and including August 2, 2007 and is hereby authorized to charge deposit account number 01-2384 for the one-month extension of time set forth in 37 CFR 1.17(a)(1) of \$120.00. The present Amendment, submitted with the accompanying Request for Continued Examination, is therefore timely filed.

Claims 32-56 are now pending in this application. Claims 1-16 and 20-21 are cancelled without prejudice or disclaimer. Applicants disagree with the rejections made in previous prosecution of claims 1-16 and 20-21 and expressly reserve the right to pursue the subject matter of those claims in a continuation application. As such, the cancellation of claims 1-16 and 20-21 is not made in acquiescence with any rejection or objection associated therewith on the present record.

It is respectfully submitted that the pending claims (claims 32-55) define allowable subject matter. More specifically, the pending claims are believed to be patentable over the art made of record, and especially the art cited against the claims examined thus far in the present prosecution, including but not limited to the activity bag disclosed by Franco et al. (U.S. Patent No. 4,506,769).

As a preliminary manner, Applicants wish to remind the Office that in a proper construction of the claims, all recitations of the claims must be considered. See MPEP § 2143.03 (all words in a claim must be considered in judging the patentability of the claim against the prior art). The previous prosecution did not reflect this approach, and Applicants' believe improperly so. The Office is not free, for either search purposes or patentability determinations of the claims over references found in a search, to disregard clearly recited elements of the claims which define the invention over prior art.

As is noted in the MPEP, it is in the interests of the Applicants and the public that a case be confined to as few actions as is consistent with a thorough examination of its merits. See MPEP § 706.07(a). It is difficult to accomplish this in circumstances wherein a refusal to give patentable weight to clearly articulated recitations effectively reads them out of the claims, placing Applicants in the undesirable position of defending a patentability position with incomplete versions of the claims due to certain aspects of the claims being entirely ignored. As the Office itself has explained, the Office's policy of compact prosecution requires that patentability issues be raised and resolved expeditiously, which requires actual consideration of the claims as a whole. Otherwise, piecemeal prosecution appears to be inevitable.

Applicants seek serious consideration of the recited subject matter, which for the reasons discussed briefly below is believed to be patentable, and Applicants are disappointed that in several Office Actions thus far in the present prosecution significant portions of the claims have simply been ignored, while a broad view of cited references has simultaneously been asserted. The combination of the Office failing to give weight to certain language of the claims, while also asserting a broad view of the cited art that is silent with respect to features clearly claimed, is not believed to be consonant with Office policies and has thus far presented an unfair and unreasonable burden on Applicants to pursue patent protection that is believed to be entitled.

The art of record, and Franco et al. in particular, is not believed to disclose "packages" as recited in the present claims, that define a cavity for packaging any products at a point of sale. Presumably, and Franco et al. do not describe differently, when the activity bag system of Franco et al. is purchased, it does not include any products within it. In other words, and in contrast to the recitations of the pending claims, the Franco et al. activity bag system is presumably sold as a stand alone product and as an empty bag devoid of any items. The items mentioned by Franco et al. to be transported in the bag are presumably separately purchased by the user. There is no indication in the Franco et al. disclosure that the activity bag "packages" anything being "offered for sale" as certain of the claims now recite. Harking back to the position taken by the Office in previous prosecution, items being "offered for sale" does not suggest intended use of the packages being claimed, but rather denotes an attribute of the items being packaged that the baggage art, to which Franco relates, typically does not involve. As noted above, items

conventionally carried in bags like the Franco bag are conventionally separately purchased from the bag.

The activity bag of Franco et al. is also not fairly characterized as a “single compartment” package referenced in certain of the pending claims. Rather, Franco et al. disclose multiple interchangeable inner containers (12) defining discrete storage compartments for different items. Franco et al. describe a first inner container (12a) containing the necessary articles for soccer, including a ball, shoes, and shin guards, a second inner container (12b) containing necessary articles for equestrian activities, and a third inner container (12c) containing the necessary articles for tennis with shoes and tennis balls shown. The containers (12a) and (12c) are each illustrated in Figure 4 with a pair of shoes in them, but it is clear that the containers are large enough such that the shoes occupy but a fraction of the storage space in each container and in the larger bag. This is clearly distinguishable from certain of the present claims wherein a single pair of footwear substantially fills a storage cavity or compartment in the cavity.

Additionally, Franco et al. surely does not meet certain recitations concerning packages having the size and shape of a lunchbox. Likewise, the Franco et al. bag is not believed to be fairly characterized as an “expandable” package as recited in certain claims. Franco discloses an insulated storage pocket but not an insulated package as certain claims now recite.

Franco certainly does not anticipate the present claims, and is not believed to be suggestive of them either. Applicants are likewise not aware of any other reference that discloses or suggests the features of the independent and dependent claims presented herein, but invites the Office to diligently conduct its own review of the issues. Applicants request that this view be conducted pursuant to MPEP § 2143.03 that requires *all* words in the claims to be considered in judging the patentability of the claim against the prior art. Applicants also request that the review be conducted in accordance with the Office Policy of compact prosecution that all the claims be reviewed, both independent and dependent, to judge the patentability of the expressly recited features therein. Applicants respectfully request, in the interests of compact prosecution, that the Office apply any reference used to reject any independent or dependent claim with specificity sufficient to support a prima facie case of anticipation (or obviousness) to

avoid further piecemeal prosecution of the subject matter involved, and so that Applicants may thoroughly respond and take appropriate action to either put the application in condition for allowance or appeal.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully Submitted,



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